



**627-01-U**

**FEDERAL LABOR RELATIONS AUTHORITY**

**5 CFR Parts 2471 and 2472**

**Procedures of the Panel; Impasses Arising Pursuant to Agency Determinations Not to Establish or to Terminate Flexible or Compressed Work Schedules**

**AGENCY:** Federal Labor Relations Authority

**ACTION:** Final rule

**SUMMARY:** The Federal Labor Relations Authority (the FLRA) is engaged in an initiative to make electronic filing or "eFiling" available to parties in all cases before the FLRA. Making electronic filing or "eFiling" available to its parties is another way in which the FLRA is using technology to improve the customer service experience.

EFiling is also expected to increase efficiencies by reducing procedural filing errors and resulting processing delays.

**DATES:** Effective Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]**.

**ADDRESSES:** Written comments can be e-mailed to [engagetheflra@flra.gov](mailto:engagetheflra@flra.gov) or sent to the Case Intake and Publication Office, Federal Labor Relations Authority, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. All written comments will be available for public inspection during normal business hours at the Case Intake and Publication Office.

**FOR FURTHER INFORMATION CONTACT:** Sarah Whittle Spooner, Counsel for Regulatory and External Affairs, (202) 218-7791; or e-mail: [engagetheflra@flra.gov](mailto:engagetheflra@flra.gov).

**SUPPLEMENTARY INFORMATION:**

In this first stage in the FLRA's eFiling initiative, the FLRA revises the regulations concerning the procedures for filing requests for Federal Service Impasses Panel (Panel) assistance in the resolution of negotiation impasses. The purpose of the proposed revisions is to make it easier for parties to file such requests by permitting the use of electronic filing (eFiling). In addition, the proposed revisions allow parties to: (1) serve copies of the requests and other documents on other parties electronically, if the receiving parties grant permission to do so; and (2) file additional documents with the Panel electronically, if the Panel has granted advance permission to do so. Further, consistent with the FLRA's other regulations and the proposed revisions regarding eFiling, the revisions change the date of service for facsimile service from the date of receipt of the transmission to the date of transmission, and change the current references to "private delivery" to "commercial delivery." As the FLRA's eFiling procedures develop, the revisions set forth in this action may be evaluated and revised further.

### **Sectional Analyses**

Sectional analyses of the amendments and revisions to part 2471, Procedures of the Panel, and part 2472, Impasses arising pursuant to agency determinations not to establish or terminate flexible or compressed work schedules, are as follows:

#### **Part 2471 – Procedures of the Panel**

##### *Section 2471.2.*

This section is amended to state that forms for parties to file either a request for consideration of an impasse or an approval of a binding arbitration procedure are available on the FLRA's website at [www.flra.gov](http://www.flra.gov).

##### *Section 2471.4.*

This section is amended to provide that requests to the Panel provided in part 2471 may be filed electronically through use of the FLRA's eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov).

*Section 2471.5.*

This section is amended to provide that: requests to the Panel provided in part 2471 may be filed electronically through use of the FLRA's eFiling system; service on other parties may be made electronically with the permission of those parties; documents submitted simultaneously with eFiling under this part may be uploaded to the FLRA's eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov); other documents may be filed electronically with the Panel if the filing party receives advance permission from the Panel by telephone; certification of service on other parties may be made through the FLRA's eFiling system; and the date of service for both electronic and facsimile transmissions will be the date of transmission. In addition, this section is amended to change the use of the term "private-delivery service" to the term "commercial delivery."

**Part 2472 - Impasses arising pursuant to agency determinations not to establish or to terminate flexible or compressed work schedules**

*Section 2472.3.*

This section is amended to provide that copies of the form for filing requests with the Panel under part 2472 are available on the FLRA's website at [www.flra.gov](http://www.flra.gov).

*Section 2472.5.*

This section is amended to provide that requests to the Panel under part 2472 may be filed electronically through use of the FLRA's eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov).

*Section 2472.6.*

This section is amended to provide that: requests to the Panel under § 2472.3 may be submitted electronically through use of the FLRA’s eFiling system on the FLRA’s website at [www.flra.gov](http://www.flra.gov); a party may serve other parties by electronic transmission if they have the other parties’ permission; documents may be submitted simultaneously with the eFiling of a request for Panel consideration, by uploading them through use of the FLRA’s eFiling system at [www.flra.gov](http://www.flra.gov); other documents may be filed electronically with the Panel if the filing party receives advance permission from the Panel by telephone; certification of service on other parties may be made in the FLRA’s eFiling system when the party files electronically; and the date of service by electronic or facsimile transmission shall be the date of transmission. In addition, this section is amended to change the use of the term “private-delivery service” to the term “commercial delivery.”

**Executive Order 12866**

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

**Executive Order 13132**

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

**Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FLRA has determined that this rule, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only

to Federal agencies, Federal employees, and labor organizations representing those employees.

#### **Unfunded Mandates Reform Act of 1995**

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Paperwork Reduction Act of 1995**

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

#### **List of Subjects in 5 CFR Parts 2471 and 2472**

Administrative practice and procedure, Government employees, Labor management relations.

## **PART 2471- [AMENDED]**

1. The authority citation for part 2471 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

2.. Section 2471.2 is revised to read as follows:

### **§ 2471.2 Request form.**

A form is available for parties to use in filing either a request for consideration of an impasse or an approval of a binding arbitration procedure. Copies are available on the FLRA's website at [www.flra.gov](http://www.flra.gov), or from the Office of the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. Telephone (202) 218-7790. Use of the form is not required, provided that the request includes all of the information set forth in § 2471.3.

▪ 3. Section 2471.4 is revised to read as follows:

### **§ 2471.4 Where to file.**

Requests to the Panel provided for in this part must either be filed electronically through use of the eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov), or be addressed to the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. All inquiries or correspondence on the status of impasses or other related matters must be submitted by regular mail to the street address above, by using the telephone number (202) 218-7790, or by using the facsimile number (202) 482-6674.

▪ 4. Section 2471.5 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

### **§ 2471.5 Filing and service.**

*(a) Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel, unless the request is filed electronically as discussed below. A clean copy may be submitted for the original. Requests may be submitted in person, electronically through use of the eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov), or by registered mail, certified mail, regular mail, or commercial delivery. Requests also may be accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or commercial delivery. With the permission of the person receiving the request, service may be made by electronic or facsimile transmission, or by any other agreed-upon method. When the Panel acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director under § 2471.1(a), it will notify the parties to the dispute, their counsel of record, if any, and any mediation service which may have been utilized.

*(b) Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse or a

request for approval of a binding arbitration procedure shall file an original and one copy with the Panel, with the exception of documents filed simultaneously with the electronic filing of a request through use of the FLRA's eFiling system. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, commercial delivery, or, in the case of documents submitted simultaneously with the electronic filing of a request for Panel assistance, may be uploaded electronically through use of the FLRA's eFiling system at [www.flra.gov](http://www.flra.gov). Documents may also be accepted by the Panel if transmitted electronically or to the facsimile machine of the Panel's office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or commercial delivery. With the permission of the person receiving the document, service may be made by electronic or facsimile transmission, or by any other agreed-upon method.

(c) A signed and dated statement of service shall accompany each document submitted to the Panel, unless the document is a request under § 2471.5(a) that is filed electronically through use of the FLRA's eFiling system. For requests under § 2471.5(a) that are filed electronically through use of the FLRA's eFiling system, the filing party shall certify, in the FLRA's eFiling system and at the time of filing, that copies of the request and any



supporting documents have been served as required. The statement of service, however filed, shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail or is delivered in person or is deposited with a commercial-delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by electronic or facsimile transmission, the date of service shall be the date of transmission.

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#### **PART 2472- [AMENDED]**

5. The authority citation for part 2472 continues to read as follows:

Authority: 5 U.S.C. 6131.

- 6. Section 2472.3 is revised to read as follows:

#### **§ 2472.3 Request for Panel consideration.**

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as hereinafter provided. A form is available for use by the parties in filing a request with the Panel. Copies are available on the FLRA's website at [www.flra.gov](http://www.flra.gov), or from the Office of the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. Telephone (202) 218-7790. Fax (202) 482-6674. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

- 7. Section 2472.5 is revised to read as follows:

#### **§ 2472.5 Where to file.**

Requests to the Panel provided for in this part must either be filed electronically through use of the FLRA's eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov), or be addressed to the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. All inquiries or correspondence on the status of impasses or other related matters must be submitted by regular mail to the street address above, by using the telephone number (202) 218-7790, or by using the facsimile number (202) 482-6674.

- 8. Section 2472.6 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

#### **§ 2472.6 Filing and service.**

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse filed pursuant to § 2472.3 of these rules shall file an original and one copy with the Panel unless the request is filed electronically through use of the FLRA's eFiling system. A clean copy may be submitted for the original. Requests may be submitted in person, electronically, or by registered mail, certified mail, regular mail, or commercial delivery. Requests will also be accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the

party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or commercial delivery. With the permission of the person receiving the request, service may be made by facsimile or electronic transmission, or by any other agreed-upon method.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse filed pursuant to § 2472.3 shall file an original and one copy with the Panel, with the exception of documents that are filed simultaneously with the electronic filing of a request for Panel consideration. A clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, commercial delivery, or, in the case of documents submitted simultaneously with the electronic filing of a request for Panel consideration, may be uploaded electronically through use of the FLRA's eFiling system at [www.flra.gov](http://www.flra.gov). Documents may also be accepted by the Panel if transmitted electronically or to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service of a document may be made in person or by registered mail, certified mail, regular mail, or commercial delivery. With the permission of the person receiving the document, service may be made by electronic or facsimile transmission, or by any other agreed-upon method.

(c) A signed and dated statement of service shall accompany each document submitted to the Panel, unless the document is a request under § 2472.3 that is filed electronically. For requests under § 2472.3 that are filed electronically, the filing party shall certify, in the FLRA's eFiling system and at the time of filing, that copies of the request and any supporting documents have been served as required. The statement of service, however filed, shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail, is delivered in person, or is deposited with a commercial-delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by electronic or facsimile transmission, the date of service shall be the date of transmission.

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Dated: February 1, 2012

Carol Waller Pope  
Chairman

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